U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARMYN J. CALDERONE and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 99-1319; Submitted on the Record;
Issued June 14, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office or Workers'

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

On April 23, 1998 appellant, then a 50-year-old postal clerk, filed a claim alleging that she sustained an emotional condition due to various incidents and conditions at work. By decision dated December 3, 1998, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. By decision dated March 10, 1999, the Office affirmed its December 3, 1998 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that another employee, Ronald Campbell, continually exposed her to harassment and discrimination at work between 1992 and 1998.[7] She claimed that Mr. Campbell would threaten her with disciplinary action "over nothing" and that he unfairly monitored the time that she used the bathroom. Appellant asserted that on March 19, 1992 Mr. Campbell intentionally hit her with a rolling cage of mail and suggested that in April 1992 he vandalized her vehicle in the parking lot of the employing establishment. She claimed that on May 15, 1992 Mr. Campbell wrongly allowed a coworker, Edward Maestas, to verbally abuse her for 45 minutes and then improperly disciplined her regarding the matter. Appellant asserted that on at least two occasions in 1994 Mr. Campbell made an obscene gesture and "glared" at her. She claimed that Mr. Campbell unfairly violated office policy by requiring her to retrieve her paychecks from him and that he did so in order to provoke a confrontation. Appellant alleged that Mr. Campbell followed her to various parts of the workplace, including the bathroom, cafeteria and drinking fountains; that he placed his body unnecessarily close to hers; that he stared at her; and that he otherwise engaged in "stalking" her. She alleged that on May 13, 1995 Mr. Campbell made a vulgar gesture to her and that on August 30, 1995 he made a vulgar comment to her.

Appellant indicated that beginning in 1997 she had a restraining order against Mr. Campbell, which prevented him from approaching her at home; she indicated that she

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] It appears that Mr. Campbell served as an acting supervisor since at least 1992 but that by 1995 he no longer performed supervisory duties.

attempted to have the restraining order expanded to cover her workplace.[8] She claimed that in 1997 Mr. Campbell improperly used the same time clock she used as a means of provoking a confrontation. Appellant also claimed that during this period Mr. Campbell stood by the cafeteria entrance when she was leaving and made vulgar comments and gestures to her.[9] She alleged that on March 25, 1997 he made a series of vulgar comments to her and harassed a coworker who had indicated that she heard the comments. Appellant claimed that on several occasions, including December 13, 1997, Mr. Campbell made vulgar comments and gestures to her husband. She alleged that the employing establishment retaliated against her for filing Equal Employment Opportunity (EEO) claims by refusing to discipline Mr. Campbell. Appellant claimed that on January 16, 1998 Mr. Campbell loudly berated her regarding a statement her husband had completed and made comments such as "why don't you run" and "you better walk away."

To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[10] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[11] In the present case, the employing establishment officials, including Mr. Campbell, denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against.[12]

Appellant alleged that Mr. Campbell made statements and engaged in actions which she believed constituted harassment and discrimination, but she did not provide sufficient corroborating evidence to establish these allegations.[13] The record contains several statements regarding the claimed events of March 25, 1997 but these statements are not of sufficient probative value to establish that Mr. Campbell harassed appellant on that date. In an undated statement, Suzanne Fessler, a coworker, stated that on March 25, 1997 she saw Mr. Campbell in a telephone cubicle, perhaps with a telephone receiver in his hand, standing near appellant. Ms. Fessler stated that she was not paying attention, but she believed that Mr. Campbell and

[8] The record reflects that in March 1997 a county court issued a restraining order which directed Mr. Campbell to keep at least 100 yards from appellant's home and to not "injure, threaten, molest, disturb, or interfere" with her. It appears that in September 1998 the restraining order was expanded to cover Mr. Campbell's actions while appellant was at her workplace. He was directed to stay at least 20 yards away from appellant at work and to not "injure, threaten, molest, disturb, or interfere" with her. Appellant noted, however, that she did not have any contact with Mr. Campbell after early January 1998.

[9] She claimed that on March 24, 1997 Mr. Campbell made a vulgar comment to her while he was using the time clock.

[10] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[12] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[13] *See William P. George*, 43 ECAB 1159, 1167 (1992).

appellant were "saying something" to each other and that she did not "overhear anything" until she heard Mr. Campbell utter a vulgarity. By her own admission, Ms. Fessler had limited knowledge of the claimed event of March 25, 1997 and the vague and equivocal nature of her statement reflects this limited knowledge. The record contains two other statements which indicate that Mr. Campbell made vulgar comments on March 25, 1997, but the statements are either vague in nature or pertain to comments that were not made in appellant's presence.

With respect to the claimed January 16, 1998 incident, Mr. Campbell stated that on that date he saw a statement completed by appellant's husband and then approached appellant and stated: "Would you tell your husband the next time he makes a statement against me to spell his name right? The guy can [no]t even write his own name!" Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[14] While it may have been imprudent for Mr. Campbell to approach appellant on January 16, 1998,[15] she has not shown how Mr. Campbell's isolated comment was of such a nature that it would rise to the level of verbal harassment or otherwise fall within the coverage of the Act.[16]

The record also contains an undated statement in which appellant's husband indicated that on a few occasions in September and October 1997, Mr. Campbell would stand by the exit to the workplace and make vulgar comments to him and appellant; that on one occasion in late October 1997 Mr. Campbell stared at appellant for 15 minutes while he was speaking on the telephone; and that, between September 1997 and February 1998 Mr. Campbell was "stalking" appellant in the workplace.[17] In another undated statement, appellant's husband stated that on March 19, 1992 he saw Mr. Campbell bang into appellant with a rolling cage of mail; that in April 1992 he saw him yelling at appellant but he could not hear what was said; and that on another occasion in April 1992 he heard Mr. Campbell tell appellant that she had three minutes to use the bathroom.

The Board notes that these statements are not sufficient to establish that Mr. Campbell harassed appellant in that they are vague and lacking in adequate detail. With regard to the comments that he "intentionally" hit appellant with a rolling cage of mail and that he was "stalking" her, these comments, in the absence of further detail, would constitute unsubstantiated statements of opinion rather than fact. Appellant filed a number of Equal Employment Opportunity complaints regarding her allegations against Mr. Campbell, but the record does not

[14] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

[15] It is unclear from the record whether appellant was disciplined for his actions with regard to appellant on January 16, 1998.

[16] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here she comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[17] In other statements, appellant's husband stated that Mr. Campbell would make vulgar comments to him when appellant was not present. Appellant did not explain how such comments would constitute harassment of her by Mr. Campbell.

contain any indication that appellant received a favorable outcome in any of these claims.[18] The record does not contain any detailed statements from clearly impartial witnesses, which establish that Mr. Campbell committed harassment or discrimination as alleged. For these reasons, appellant has not established her claim that she was subjected to harassment or discrimination at work.

Appellant also alleged that the employing establishment improperly failed to discipline Mr. Campbell and that her activities at work were unreasonably monitored. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[19] Although the handling of disciplinary actions and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[21] Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these administrative matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[22]

[18] In fact, the record contains a July 21, 1995 EEO decision in which the administrative judge denied appellant's claim and questioned her veracity.

[19] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[20] *Id.*

[21] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[22] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The March 10, 1999 and December 3, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 14, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member